IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. No. 466/2006

Judgment delivered on: September 18, 2007

National Insurance Co. Ltd. ..... Appellant
Through: Mr.L.K. Tyagi, Adv.

versus

Smt. Chander Devi & Ors. ..... Respondent
Through: Mr.Sudarshan Rajan with Ms.Mamta Rani , Advs. for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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By way of this appeal, the insurer i.e. National Insurance Company Ltd. has assailed the impugned award mainly

on the ground that the insurer could not have been held responsible for payment of the compensation amount on account of the fact that the cheque towards premium issued by respondent No.3 got dishonoured and pursuant thereto, the insurance policy was cancelled by the appellant. It was further contended that the appellant company being a public undertaking is not supposed to distribute public funds unless there is any legal liability of the insurance company under the contract of insurance to indemnify the loss. It is stated that the insurance cover note in the present case was issued by the appellant for a period w.e.f. 22.5.2000 to 21.5.2001 on receipt of the premium through cheque, but the said cheque was returned unpaid due to insufficient funds lying in the account of the insured as informed to the appellant by the banker of the insured vide memo dated 21/25.5.2000. It is further stated that said bouncing of the cheque and cancellation of the insurance policy by the insurance company was immediately informed by the insurance company vide letter dated 21.5.2000 but despite the said communication, the insurer did not come forward to pay the amount towards premium. It is stated that the contract was not complete and, therefore, no liability to pay compensation to the

respondents/claimants could be fastened on the appellant insurer. The appellant has also relied upon Section 64 VB of the Insurance Act to state that no risk be assumed unless the premium is received by the insurer in advance.

Mr.L.K. Tyagi, counsel for the appellant has urged that the decision of the Supreme Court in **Oriental Insurance Co. Ltd. Vs. Inderjit Kaur & Ors.**, *1 (1998) ACC 1 (SC)* is distinguishable from the facts of the present case inasmuch as in the present case policy of the insured was cancelled and despite notice being given to the insured, the insured did not pay the premium. The contention of counsel for the petitioner is that the decision of the Apex Court in **Inderjit Kaur's** case will be of no help to the respondents/claimants in the present case. The counsel also contended that no consideration was ever passed on to the appellant insurer and, therefore, in the absence of any consideration no contract between the insurer and the insured came into existence and in the absence of any contract no liability for payment of any compensation amount could have been imposed upon the appellant by the Tribunal.

Mr.Sudarshan Rajan, counsel appearing for respondent No.1 has urged that the legal position on this issue has been

settled by a catena of decisions of the Hon'ble Supreme Court as well as the State High Courts. Counsel for the respondent has placed reliance on the following judgments:

1. Oriental Insurance Co. Ltd. Vs. Indierjit Kaur & Ors, AIR 1998 SC 588; and

2. National Insurance Co. Ltd. Vs. Swaran Singh & Ors., (2004) 3 SCC 297

Counsel has contended that even in a case where the insurer has not received the premium but has issued the policy in favour of the insured, the insurer becomes liable to indemnify the third party in respect of the liability covered by the said policy. The counsel contends that even in a case where the insurance company has cancelled the policy on account of non-payment of premium and accident has taken place after the cancellation, still the insurance company cannot avoid its liability as far as third party is concerned. I find force in the submissions of counsel for the respondent.

The Tribunal has relied upon decision of the Apex Court in the case of **Inderjit Kaur's case (supra)** and has held the appellant insurer to be liable for compensation as far as the third party is concerned. The Tribunal has also observed the factum of

cancellation of the policy due to non-receipt of premium by the insurer but after taking into consideration the decisions of the Supreme Court reported in **Oriental Insurance Co. Ltd. Vs. Inderjeet Kaur & Ors**, *1998 ACJ 123* and **National Insurance Co. Ltd. Vs. Lakshmi & Ors.,** *2004 ACJ 197,* holding that the insurer cannot be absolved from the liability as regards indemnification of third party is concerned. The Tribunal has however, given the right of recovery of amount paid under award to the insurer from the insured i.e. owner of the vehicle, respondent No.3 here. In view of the said findings given by the Tribunal, I do find any infirmity or perversity in the order passed by the Tribunal, more particularly, when Tribunal has given the right of recovery to the insurer appellant to recover the awarded amount from the insured i.e. Mr.O.P. Juneja, respondent No.3 here.

At this stage, counsel for the appellant has placed reliance on the order passed by this Court in MAC. App. No. 08/2005 dated 01.8.2007 where instead of filing a recovery suit the Court has given the right to the insurer to take recourse to file an application for execution against the insured treating the award as decree in favour of the insurance company.

In view of the said order of this Court, let the award passed in question be treated as decree in favour of the insurance company and against the insured i.e. respondent No.3 here and recovery against him be affected in terms of Section 174 of Motor Vehicles Act, 1988.

Counsel for the respondent has drawn my attention to order dated 03.7.2006 whereby the directions were given to the appellant to deposit the entire award amount with the Registrar General of this Court. Counsel prays that the said amount may be directed to be released in favour of respondent No.1. Counsel further contends that the amount of Rs.25,000/- which was deposited by the appellant is also towards the said compensation amount and, therefore, the same also needs to be released in favour of respondent No.1. Since respondent No.1 succeeds in the present appeal, therefore, the said amount lying deposited with the Registrar General of this Court i.e. Rs.25,000/- and amount of Rs.5,45,977/- be released in favour of respondent No.1 along with interest, if any, accrued thereon.

With the aforesaid directions, the appeal is disposed of.

September 18, 2007 **KAILASH GAMBHIR, J**
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